

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**STUCKEY DIAMONDS, INC.**

**vs.**

**FISCHER DIAMONDS, INC.**

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**Civil Action No.**

**COMPLAINT**

Plaintiff Stuckey Diamonds, Inc. brings this action for federal trademark infringement and unfair competition against defendant Fischer Diamonds, Inc. and in support thereof the alleges as follows:

**THE PARTIES**

1. Stuckey Diamonds, Inc., d/b/a/ the Stuckey Company (“Stuckey”), is a corporation organized under the laws of the State of Texas with a principal place of business at 952 Echo Lane, Suite 370, Houston, Texas 77024.

2. Upon information and belief, defendant Fischer Diamonds, Inc. (“Fischer”) is a corporation organized under the laws of the State of New York with a principal business address of 1212 Sixth Avenue, New York, NY 10036.

**JURISDICTION AND VENUE**

3. This is an action for federal trademark infringement and unfair competition. This court has jurisdiction over the subject matter of this action under Section 39(a) of the Federal Trademark Act of 1946, also known as the Lanham Act, under 28 U.S.C. §§ 1331, 1337 and 1338(a) and (b) because the action arises under the laws of the United States.

4. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this judicial district.

### FACTS

5. Stuckey was incorporated in 1981, and its predecessor, Stuckey and Speer, Inc., has been doing business since 1951. Since inception, the Company has operated as a wholesaler of diamond jewelry with its main office in Houston, Texas. It has a nationwide business and it sells to retail jewelers in all fifty states.

6. Since 1968, it has had a business relationship with the Jasoni family, a diamond trading company ("DTC") sightholder, also known as DeBeers, the largest purveyor of rough diamonds in the world. The Jasoni Group has been one of the top ten DTC sightholders, that is, purchasers of rough diamonds from DeBeers since 1972 and an equity partner of the Stuckey Company since 1981.

7. In 2003, DTC introduced the "Right Hand Ring" concept to its sightholders. Stuckey then began development of a marketing plan for the Right Hand Ring. Stuckey's marketing plan was known as the "You" collection and used the marketing phrases, "The left hand is all about love; the right hand is all about you" with a stylized "you" ("Collectively "the Stuckey Marks").

8. In connection with the development of this program, on May 9, 2003, Stuckey applied for a federal registered trademark for the word "YOU" for loose diamonds and finished jewelry incorporating diamonds.

9. In the fall of 2003, Stuckey completed the development of its Right Hand Ring diamond jewelry line, "You" and began rolling it out to its customers as of the first of January 2004.

10. The Stuckey Marks has been in use continuously since the fall of 2003 when Stuckey began marketing and actively selling the brand to its customers.

11. YOU was published for opposition on January 27, 2004 and was registered on April 20, 2004, Registration No. Registration attached as Exhibit A.

12. Stuckey has produced newspaper ads, television ads, radio ads, billboard ads, point of sale displays, counter cards, duratrans, postcards, flyers and catalogs for the YOU campaign. All of these ads focus on YOU.

13. Additionally, since the fall of 2003, the YOU brand has been frequently advertised in jewelry industry trade publications as well as multiple direct mailings to Stuckey's active customer list of over 1,500 and to prospect lists of 9,000 retail jewelers. Marketing expenses of the Company, including the creation of the campaign production, printing and advertising exceed \$500,000. Additionally, its customers have spent over \$500,000 for advertising and distribution of the YOU marketing material.

14. In this short period of time, the YOU brand has become well recognized and famous within the jewelry industry.

15. As a result of Stuckey's marketing and advertising campaigns, the Stuckey marks are readily identified with Stuckey.

16. As a result of all of these efforts and the quality of its goods and services, the Stuckey marks have come to represent substantial good will of Stuckey.

17. By virtue of the good will and reputation associated with the Stuckey Marks and Stuckey's extensive and long standing use of YOU, YOU has an exceptionally strong secondary meaning and significance of the minds of consumers.

18. On May 6, 2005, a Stuckey executive received a call from a customer asking if he had seen the new Jeweler Circular Keystone trade magazine which is sent to over 35,000 retail stores nationwide. The magazine had an advertisement by Fischer Diamonds, a competitor of Stuckey, which featured the phrase "It's all about You" using a stylized YOU. Fischer advertisement attached as Exhibit B.

19. Stuckey has not given Fischer Diamonds permission to use the Stuckey Marks.

20. On May 11, Stuckey's attorneys sent a letter to Fischer Diamond asking it to cease and desist the improper use of its trademarks. There was no response.

21. Since the advertisement ran, Stuckey has received e-mails and phone calls from its customers confused about its brand name YOU being affiliated with a different company. It has been asked repeatedly whether it actually owns the brand name that its customers have been using to market the Right Hand Ring.

22. Fischer, through its unlawful activities, wrongfully willfully and intentionally interfered with Stuckey's use of the Stuckey marks.

23. Fischer has used the Stuckey Marks wrongfully, willfully and illegally to interfere with Stuckey's business to the economic detriment of Stuckey by misrepresenting the source and original of goods offered under the Stuckey mark, causing a likelihood of customer confusion and actual customer confusion about Stuckey's trademark and goods and services.

24. If Fischer is permitted to continue the use of the Stuckey marks, the injury to Stuckey and its business will be incalculable and could well create wide spread confusion in the industry for the coming year about who owns the brand YOU. Accordingly, Stuckey is being substantially and irreparably harmed by the misappropriation of its trademark by Fischer.

**COUNT I**  
**FEDERAL TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114.**

25. Paragraphs 1 through 24 of the Complaint are incorporated by references as if fully set forth below.

26. Stuckey is the owner of the mark registered trademark

27. YOU is an arbitrary mark and thus inherently strong and distinctive. Stuckey has been using the mark in interstate commerce in connection with diamonds and diamond jewelry since 2003.

28. Fischer's is using YOU in its advertisements in connection with its diamond jewelry in interstate commerce without permission and authorization or license of Stuckey.

29. Fischer's unauthorized use of Stuckey's federal registered mark YOU is likely to and has actually confused consumers and will continue to confuse an appreciable number of consumers into believing Fischer's products are those of or related to Stuckey's, when, if fact, they are not. Accordingly, Fischer is infringing upon Stuckey's federal registered trademark "YOU" by engaging the foregoing direct infringement, Fischer has violated § 32 from Lanham Act, 15 U.S.C. § 1114.

30. Fischer's actions described above have damaged Stuckey. Moreover, Fischer has caused and has continued to cause irreparable injury to Stuckey's good will and reputation for which Stuckey has no adequate remedy at law.

31. Fischer's infringement of the federal registered trademark YOU is willful, wanton and outrageous and entitled Stuckey to recover punitive damages.

**COUNT II**  
**FALSE DESIGNATION OF ORIGIN, FALSE REPRESENTATION AND**  
**FALSE ADVERTISING IN VIOLATION OF 15 U.S.C. § 1125(a).**

32. Paragraph 1 through 31 of the Complaint are incorporated by reference as fully set forth below.

33. Both Fischer and Stuckey are competing for the same clients in the field of diamond jewelry.

34. Fischer's unauthorized use, in business and interstate commerce, of the Stuckey Marks in its advertisements and in connection with promotional materials has intentionally and willfully misled and continue to mislead and deceive an appreciable number of consumers into believing that Fischer's products are licensed by or sanctioned by or otherwise affiliated with Stuckey when, in fact, they are not.

35. Accordingly, Fischer has engaged in unfair competition through its false designation of origin, false description of representation, and false advertising.

36. By engaging in and/or contributing to the foregoing false designation or origin, false description of representation and/or false advertising, Fischer has violated Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

37. Fischer's actions described above have damaged Stuckey. Moreover, Fischer has caused and has continued to cause irreparable injury to Stuckey's good will and reputation for which Stuckey has no adequate remedy of law.

38. Fischer's false designation of origin, false representation and false advertising in connection with Stuckey's mark is willful, wanton and outrageous and entitles Stuckey to recover punitive damages.

WHEREFORE, Plaintiff Stuckey Diamonds, Inc. respectfully requests this Court enter judgment in its favor and against defendant, Fischer Diamonds, Inc. as follows:

1. Preliminary and permanent injunctive relief in the form of an Order requiring

(a) Fischer immediately cease and desist use of any and all use of the trademark YOU and "It's all about You" or any similar terms or titles in connection with any goods or services, and

(b) requiring Fischer to take all appropriate steps in the form of corrective advertising, at Fischer's sole expense, to remedy the mistaken impressions that have already been created in the minds of consumers.

2. An accounting of any and all profits that Fischer has earned from its misuse of the mark.

3. Compensatory damages

4. Treble compensatory

5. Punitive damages

6. Prejudgment Interest


7. Plaintiff's costs and expenses including reasonable attorneys fees, and

8. Such other and further relief as this Court has deemed just and proper.

### **DEMAND FOR JURY TRIAL**

A jury trial is demanded all issues so triable.

RESPECTFULLY SUBMITTED:

  
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Attorneys for Plaintiff Stuckey Diamonds, Inc..





**Int. Cls.: 14 and 35**

**Prior U.S. Cls.: 2, 27, 28, 50, 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 2,834,101**

**Registered Apr. 20, 2004**

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

**YOU**

THE STUCKEY DIAMOND COMPANY (TEXAS  
CORPORATION)  
952 ECHO LANE, SUITE 370  
HOUSTON, TX 77024

FOR: LOOSE DIAMONDS AND FINISHED JEW-  
ELRY INCORPORATING DIAMONDS, IN CLASS 14  
(U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 4-15-2003; IN COMMERCE 4-15-2003.

FOR: BUSINESS SERVICES, NAMELY, RETAIL  
STORE SERVICES AND WHOLESALE DISTRIBUTORSHIP  
SERVICES FEATURING LOOSE DIA-

MONDS AND FINISHED JEWELRY  
INCORPORATING DIAMONDS, IN CLASS 35 (U.S.  
CLS. 100, 101 AND 102).

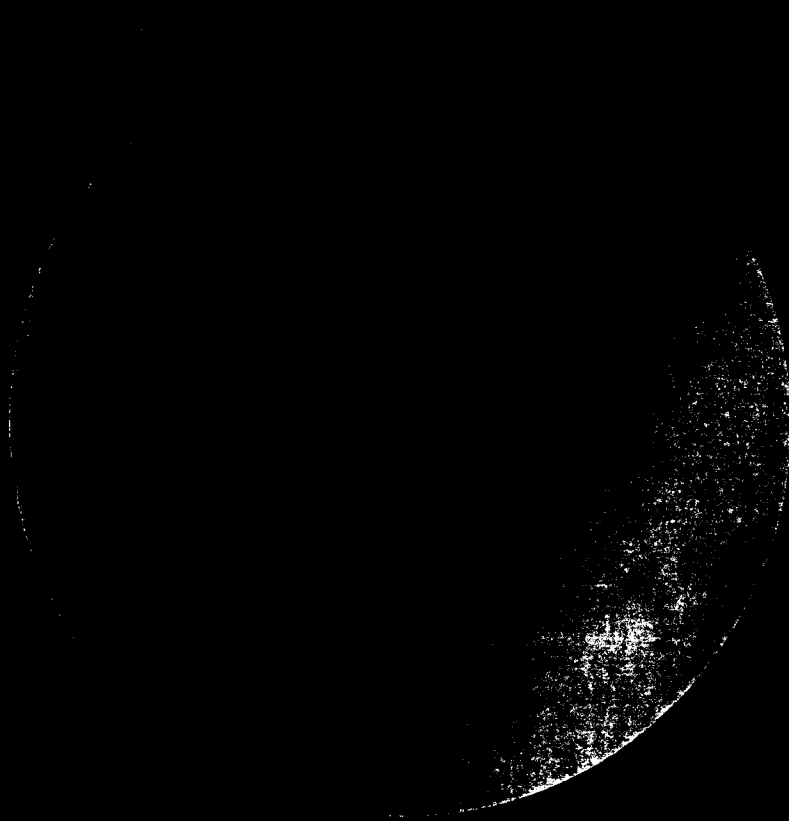
FIRST USE 4-15-2003; IN COMMERCE 4-15-2003.

OWNER OF U.S. REG. NOS. 1,516,824, 2,702,842  
AND OTHERS.

SER. NO. 76-517,744, FILED 5-9-2003.

KHANH LE, EXAMINING ATTORNEY





IT'S ALL ABOUT  
**YOU**<sup>TM</sup>

YOUR NAME. YOUR PEOPLE. YOUR JEWELRY.

IN THE AGE OF BRAND-CENTERED BUYING, THE MOST IMPORTANT NAME IN YOUR VENTURE IS YOURS. WITH OUR EXTENSIVE INVENTORY, VAST EXPERIENCE AND UNRELENTING COMMITMENT TO EXEMPLARY SERVICE, YOU WILL HAVE EVERYTHING YOU NEED TO MAKE YOUR BRAND THE ONE CONSUMERS ASK FOR. LET US HELP YOU BUILD YOUR BRAND.

JCK LAS VEGAS BOOTH 15145

Fischer Diamonds, Inc. 1212 Avenue of the Americas, Suite 801 New York, NY [www.fischerdiamonds.com](http://www.fischerdiamonds.com) 1.800.223.2211